ROYAL CANADIAN MOUNTED POLICE

Royal Canadian Mounted Police Act

Part VII
Subsection 45.46(3)

Chairman's Final Report after a Public Hearing

Complainant:

Caroline Miller Halliday

July 3, 1992

File No.: 2000-PCC-90170

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I. INTRODUCTION

1. The Process

Part VII of the Royal Canadian Mounted Police Act states that any member of the public may make a complaint concerning the conduct of any member of the RCMP (the "Force") or other person employed under the authority of the Act if this conduct is associated with the performance of any duty or function under the Act. The RCMP has the initial responsibility for investigating the complaint and responding to it. When a complainant is not satisfied with the disposition of the complaint by the Force, he may refer it to the Commission for review. Upon review of the complaint, if the Commission Chairman is not satisfied with the manner in which the Force disposed of the complaint or considers that further inquiry is warranted, he may, among other things, institute a hearing to inquire into the complaint. In this case, the Chairman must assign the member or members of the Commission (the Commission Panel) to conduct the hearing and send a notice in writing of the decision to institute a hearing to the Solicitor General of Canada, the Commissioner of the RCMP, the RCMP member(s) whose conduct is the subject-matter of the complaint and the complainant. One of the members assigned to the Commission Panel must be the Commission member appointed for the contracting province in which the incident occurred.

Part VII of the Act further states that hearings are to be public. During this hearing, the complainant, the person who is the subject-matter of the complaint, and the RCMP, through its appropriate officer, have the right to be heard either in person or through counsel. They are entitled to present evidence, cross-examine witnesses and make representations. Any person who convinces the Commission Panel that he or she has a substantial and direct interest in the complaint also has the same rights.

On completion of the hearing, the Commission Panel must send to the Solicitor General and the Commissioner a report in writing setting out such findings and recommendations with respect to the complaint as it sees fit. While this is an interim report according to the Act, the Commission feels that it must be accessible to all parties and to the public.

The RCMP Commissioner must subsequently review the complaint in light of the findings and recommendations set out in the report.

After reviewing the complaint, the Commissioner must notify the Solicitor General and the Commission Chairman in writing of any further action that has been or will be taken with respect to the complaint. Where the Commissioner decides not to act on any findings or recommendations set out in the report, he must include in the notice the reasons for not so acting. After considering this notice, the Commission Chairman prepares and sends to the Minister, the Commissioner and the parties a final report in writing setting out such findings

and recommendations with respect to the complaint as he sees fit. Like the report of the Commission Panel, this report is accessible to the public.

2. Background of the Final Report

The complainant, Caroline Miller Halliday, of Brentwood Bay, B.C., wrote to the RCMP setting out the events that occurred in the early morning hours of November 4, 1989.

The complaints were filed in the Sidney, B.C. Detachment on November 6, 1989. The RCMP conducted its investigation and provided, as required by section 45.4 of the Act, a final report to the complainant dated February 14, 1990.

On March 12, 1990, the Commission received a request for review of her complaint against Constable G.P. MacDonald.

The Chairman reviewed her complaint and, after conducting further investigation, decided, pursuant to paragraph 45.42(3)(c) of the Act, to institute a hearing to inquire into this complaint. The Commission Panel was composed of Lyman R. Robinson, Q.C., as Chairman, Rosemary A. Trehearne and Kenneth Stevenson, Q.C. The hearing was held on July 15 to 18, 1991 in Victoria, British Columbia.

The parties to the hearing were: the complainant, Caroline Miller Halliday; the RCMP member whose conduct was the subject-matter of the complaint, Constable G.P. MacDonald; and the RCMP, through its appropriate officer. The Commission Panel report, dated November 18, 1991, was submitted to the Solicitor General of Canada and the RCMP Commissioner. On January 30, 1992, the RCMP Commissioner sent the Solicitor General of Canada and the Commission Chairman his written notice regarding the Commission's report, in which he indicated the additional action that would or should be taken with respect to the complaint.

II. COMMENTS AND CONCLUSIONS ON THE COMMISSIONER'S NOTICE

This report is the Chairman's final report, required under Part VII of the Royal Canadian Mounted Police Act. Appendix A is a copy of the report of the Commission Panel which conducted the hearing; Appendix B is a copy of the Commissioner's notice, dated January 30, 1992.

In the second paragraph of his notice, the Commissioner stated the following:

> I note the Commission [Panel] received a great deal of evidence concerning the carotid control technique and as a consequence, the Commission made a number of findings and recommendations relating to RCMP policies, procedures and training programs. In accordance with subsection 5(1) of the RCMP Act, the Commissioner of the RCMP, under direction of the Minister, has the control and management of the Force and all matters connected therewith. Therefore, I will take these findings and recommendations under advisement. They will be examined and reviewed as an internal matter by policy sections of the various RCMP Directorates. The results will then be forwarded to the Minister in my annual Accountability Report.

and in the third paragraph:

> In respect of findings (B) and (F), they are viewed as observations rather than findings. Findings (A), (C), (D) and (E), along with Recommendations (1), (2), (3) (4), (5), (6), (7) and (10) are not directly related to the resolution of the complaint and, as a result, I take them under advisement. I will instruct the Director of Training to examine and review them as an internal matter.

Findings (B) and (F) read the same way:

> The use of the carotid control technique is a preferable alternative to the use of a firearm or a blow to the head by a baton or similar object.

With respect to Findings (B) and (F), I do not question the Commissioner's remarks. They could be viewed as observations.

The Commissioner indicates that Findings (A), (C), (D), (E) and Recommendations 1 to 7 inclusively, and 10 are not directly related to the resolution of the complaint and, as a result, he has taken them under advisement. He will instruct the Director of training to review them as an internal matter.

The evidence heard by the Commission Panel would seem to warrant the Commission Panel's findings and recommendations on RCMP policies, procedures and training with respect to the carotid control technique. Obviously, the facts must be related to the subject-matter of the complaint. In the case at hand, there is an allegation that the carotid control technique was incorrectly used on Caroline Miller Halliday.

The Commission Panel, in its analysis of the evidence, has concluded that these findings and recommendations were related to the resolution of the complaint, a view that I share and I wish to reiterate them.

The Commissioner has accepted Findings (G), (H) and (I), and has agreed with Recommendations 8(a), (b), (c) and 9. I am satisfied with the Commissioner's positive response to these findings and recommendations.

At paragraph 4 of page 2 of his notice, the Commissioner says:

> I note "Other matters" address issues such as the preservation of recordings of police communications, the conduct of internal investigations, the informal resolution of complaints and the production of evidence by the RCMP to the PCC. They are reflected in Recommendations #11, #12, #13, #14 and #15, which I take under advisement. I will, however, instruct the Director of Personnel to examine and review them as an internal matter.

Recommendation No. 11 reads as follows:

> When the RCMP receives a complaint or notice of a complaint, the recordings of any police radio communications by officers that may pertain to the complaint should be preserved and if a complaint is filed with the Public Complaints Commission, a copy of the recorded communication should be produced to the Public Complaints Commission.

Complaints made to the Commission in the first instance are sent to the Commissioner for investigation. At that point, the police radio communications pertaining to the complaint are not required by the Commission, unless the Chairman has used his power to investigate the complaint in the public interest. The members' radio communications pertaining to the complaint should always be part of the investigation and included with the investigation report. Therefore, when the Commissioner is asked to forward materials under the control of the Force as are relevant to the complaint, either for a review, a hearing or an investigation by the Chairman, the radio communications pertaining to the complaint would be included.

The recommendation could be modified as follows:

> Police radio communications that may pertain to the complaint should be preserved and should always be part of the materials under the control of the Force as are relevant to be complaint.

I wish to reiterate Recommendation No. 11 as modified.

It is recommended in Recommendation No. 12 that internal investigations, where possible, be conducted by an officer from another detachment. Similar recommendations have been made in the past and the Commissioner generally agreed.

I acknowledge that this recommendation is more appropriate for small detachments than large ones such as Surrey, Burnaby, etc., where an investigator can be selected who has no working relationship with the member against whom the complaint was made, a situation which is difficult to find in small detachments. The Halliday complaint is against a member of the Sidney Detachment which has a complement of 21 members and could not be considered a large detachment for that purpose as it could be difficult to have an NCO that has no working relationship with the member(s) against whom the complaint was made. However, it would appear that the subject-matter of the recommendation is covered in the Commissioner's Standing Orders (Public Complaints), published in Chapter XII.2.C.9. of the Administration Manual, which reads:

> A member shall not investigate a complaint where that member may be in a conflict of interest situation.

Regarding Recommendation No. 13, in a number of other complaints in the past, the Commission has been contacted by several complainants advising that they had not been communicated with by the investigators. These contacts by complainants were made mostly in relation to the review of complaints by the Commission. I am of the view that the complainant should be communicated with in all investigations and provided with the opportunity of giving a full statement describing the events leading to the complaint, unless there are special reasons not to do so. I wish to reiterate Recommendation No. 13.

With respect to Recommendation No. 14 which refers to the Force taking every opportunity to seek the informal resolution of the complaint pursuant to subsection 45.36(1) of the RCMP Act, I wish to reiterate the recommendation, bearing in mind the Commissioner's Standing Orders (Public Complaints), published in Chapter XII.2.E.2. of the Administration Manual, which reads:

> The informal resolution of a public complaint will not be attempted for any complaint that involves a breach of the Code of Conduct that would warrant formal discipline.

With respect to Recommendation No. 15, the relevant comments of the Commission Panel can be found at page 43 of the Commission Panel report and deal with the production of notes of the officers concerned.

In this case the ad hoc counsel to the Commission had asked that the notes of all officers be provided. Constable MacDonald's notes had not been provided. They should have been as notes are usually made immediately after the incident and are most valuable as evidence at the hearing or for the review of a complaint from a dissatisfied complainant.

Recommendation No. 15 reads as follows:

> Whenever a complaint has been filed with the Public Complaints Commission, copies of the notebooks of all of the officers who have been involved with the subject-matter of the complaint shall be produced to the Public Complaints Commission.

Complaints made to the Commission in the first instance are sent to the Commissioner for investigation. At that point, the notes of the members pertaining to the complaint are not required by the Commission, unless the Chairman has used his power to investigate the complaint in the public interest. The members' notes pertaining to the complaint should always be part of the investigation and included with the investigation report. Therefore, when the Commissioner is asked to forward materials under the control of the Force as are relevant to the complaint, either for a review, a hearing or an investigation by the Chairman, the members' notes pertaining to the complaint would be included.

Therefore, it seems that Recommendation No. 15 could be modified as follows:

> Notes of all officers should always be part of the materials under the control of the Force as are relevant to the complaint.

I wish to reiterate Recommendation No. 15 of the Commission Panel, as modified.

The Commissioner has not passed comments regarding Recommendation No. 16, which says that the Commissioner inform the Commission of all measures he has taken in response to the Commission Panel report. I find that he has informed the Commission.

The Commissioner questioned the scope the Commission Panel has to formulate findings and recommendations. I do not share the view of the Commissioner as I feel the findings and recommendations made by the Commission Panel all have some direct relation to the resolution of the complaints. In reiterating these recommendations, I do not question the responsibility of the Commissioner for the management of the Force. I accept that decisions in these matters rest with the Commissioner.

In closing, I wish to say that I do not take lightly the comments of the Commissioner about findings and recommendations that the Commissioner views as not directly related to the complaint. In each case, the Commissioner has indicated that the findings or recommendations will be referred to the relevant policy centre to be examined and reviewed. Some of the results will be forwarded to the Minister in the Commissioner's annual accountability report. The Commissioner indicated that he would be taking action in all matters addressed in his notice. Furthermore, the Commissioner said that he will personally monitor their ultimate resolution.

This is a major commitment made by the Commissioner and I am certain that an adequate review will be made of the issues that have been raised resulting in appropriate policies, procedures, etc. I wish to acknowledge the positive aspect of the Commissioner's response.

Pursuant to subsection 45.46(3) of the RCMP Act, I have considered the Notice of the Commissioner and I am submitting my final report.

Chairman

July 3, 1992

Mr. J.B. Giroux
Chairman
RCMP Public Complaints Commission
P.O. Box 3423, Station D
Ottawa, Ontario
K1P 6L4

ROYAL CANADIAN MOUNTED POLICE

PUBLIC COMPLAINTS COMMISSION

Royal Canadian Mounted Police Act

Part VII
Subsection 45.45(14)

Public Hearing
Into the Complaint of
Caroline Halliday

COMMISSION REPORT

COMMISSION PANEL: Lyman R. Robinson, Q.C.
Rosemary A. Trehearne
Kenneth Stevenson, Q.C.

PLACE AND DATES OF HEARING:

Victoria, British Columbia
May 21-25, 1991

LETTER OF TRANSMITTAL

November 18, 1991

TO: The Honourable Douglas Lewis, Q.C.
Solicitor General of Canada

TO: Commissioner Norman Inkster
Royal Canadian Mounted Police

The undersigned were appointed by Dr. Richard Gosse, Q.C., Chairman, Royal Canadian Mounted Police Public Complaints Commission, pursuant to the authority invested in him under Part VII of the Royal Canadian Mounted Police Act, to conduct a public hearing to inquire into a complaint by Caroline Halliday in respect of certain events that occured at Sidney, British Columbia on November 4, 1989.

We have the honour to submit our report in accordance with subsection 45.45 (14) of the Royal Canadian Mounted Police Act.

Lyman Robinson, Q.C.

Rosemary Trehearne

Kenneth A. Stevenson, Q.C.

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APPEARANCES:

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Mr. C. Bing 328 Goldstream Ave Langford, B.C. V9B 2W3	Counsel for Auxiliary Constable Geddie
Ms. T. Brucker 1200 Vanier Parkway Ottawa, Ontario K1A 0R2	Counsel for the appropriate officer in the complaints of Michael and Steven Cooper
Ms. A. Finall 304 - 9775 4th St. Sidney, B.C.	Counsel for Cst. B. Hodgkin
Mr. K. B. Kardish 409 - 3960 Quadra St. Victoria, B.C. V8X 4A3	Counsel for Cst. Glen P. Macdonald
Mr. G. P. Macdonald 200 - 506 Fort St. Victoria, B.C. V8W 1E6	Counsel for Cst. K. Horsman
Mr. D. M. McKimm 9830 - 4th Street Sidney, B.C. V8L 2Z3	Counsel for C. Halliday
Mr. A. Morin 1200 Vanier Parkway Ottawa, Ontario K1A 0R2	Counsel for the appropriate officer in the Complaint of C. Halliday

REPORT

PART I: THE HEARING PROCESS

On November 26, 1990, Dr. Richard Gosse, Q.C., the Chairman of the RCMP Public Complaints Commission issued three Notices to institute hearings into complaints by Caroline Miller, Michael Cooper and Steven Cooper. By these Notices, Mr. Alan Williams, Q.C., Mr. K.A. Stevenson, Q.C. and Ms. Rosemary Trehearne were assigned to conduct the hearings into the complaints. By Notices dated the 20th day of March, 1991, Dr. Richard Gosse, Q.C., the Chairman of the RCMP Public Complaints Commission, acting in accordance with section 45.29 (7) of the Act, assigned Mr. Lyman R. Robinson, Q.C. to conduct the hearings in place of Mr. Alan Williams, Q.C.

After the date of the complaint by Caroline Miller, she married and she is now Mrs. Caroline Halliday.

The complaints by Caroline Halliday and Michael Cooper both complain about the use and application of the carotid control technique. The complaints by Michael Cooper and Steven Cooper arose from the same incident. Much of the evidence pertained to all three complaints. Consequently, the hearings for the three complaints were consolidated into one public hearing.

Public hearings were held in Victoria, British Columbia on May 21-25, 1991 and July 15-18, 1991. After hearing the testimony of witnesses, oral submissions were made by counsel. In addition, written submissions were made by Mr. Andre Morin, counsel for the appropriate officer in the complaint of Caroline Halliday, Ms. Theresa M. Brucker, counsel for the appropriate officer in the complaints of Michael and Steven Cooper, Mr. B. Morahan, counsel for Mr. Witmer and Mr. D. Sorochan, Q.C., ad hoc counsel to the Commission.

PART II: APPLICATION BY CHEK-6 TV TO TELEVISE PROCEEDINGS

Prior to the commencement hearing, an application was made by CHEK-6 Television for "news camera access" on each day of the hearing. This applications was heard by means of a telephone conference call on May 17, 1991 in which all counsel of record were invited to participate.

The issue of camera access by the television news media will likely arise in future hearings of the Commission and the rulings made in this hearing may be cited at future hearings of the Commission. Therefore, it may be worthwhile to set forth the reasons for the rulings

that were made with respect to the hearings into these complaints.

Mr. David Biro, the News Director of CHEK-6 Television, presented the submissions on behalf of CHEK-6. His primary argument was that "electronic journalists" should have the same opportunity as the "pencil press" to bring the tools of their trade, namely the television news camera, into a public hearing.

Mr. Sorochan, ad hoc counsel to the Commission, supported the application of CHEK-6 on the basis of section 2 (b) of the Charter of Rights and Freedoms which provides for "freedom of the press and other media of communication". He cited examples of several commissions of inquiry where television news camera access had been permitted and several court judgments where freedom of the press had been discussed. These authorities will be discussed later.

All of the other counsel who made submissions on the interlocutory application opposed granting permission to the television news media to televise the hearings in their entirety. Mr. McKimm, counsel for the Complainant, Caroline Halliday, opposed the application on the basis that the complainant was extremely nervous about being required to testify in front of television news cameras. When she laid her complaint, she did not expect that the proceedings would take on their present magnitude and the presence of television news cameras might seriously affect her ability to give evidence.

Mr. Kardish, counsel for Constable Glen Macdonald, advised the Panel that he had been unable to obtain specific instructions from Constable MacDonald who was en route from Halifax to Victoria but Mr. Kardish took the position on behalf of his client that television coverage could be prejudicial to his client and therefore, Mr. Kardish opposed the application.

Counsel for the "appropriate officer", Ms. Brucker, opposed the application on the basis that television coverage in previous PCC hearings had been limited to the formal opening of the hearing and had been by agreement of all concerned.

Mr. Kelliher, counsel for the Coopers in the Cooper Hearing, advised the Panel that he had not been able to obtain instructions from his clients but took the position that it was unlikely that his clients were interested in television coverage.

Mr. Macaulay, counsel for Cst. Orthner in Cooper Hearing, opposed the application on the basis that

television coverage would give the hearing a larger significance than it deserved.

In response to a question from the Chairman of the Panel, none of the counsel objected to televising the evidence of the expert witnesses.

At the conclusion of the interlocutory application, the following rulings were made:

1. Television cameras, other cameras and electronic recording devices will be permitted in the hearing room during the formal opening of the hearing including the opening statement of ad hoc commission counsel.

2. Television cameras, other cameras and electronic recording devices will not be permitted in the hearing room during the testimony of the complainants or any officer who is named as a party and any officers who are called to testify with respect to the actual conduct that is the subject of complaint. This prohibition applies not only to media but to all members of the public who may attend the hearing. This prohibition does not apply to the Official Reporter who is recording the proceedings for the purpose of preparing a transcript of the hearings.

3. Television cameras, other cameras and electronic recording devices will be permitted in the hearing room during the testimony of witnesses who have qualified as "expert witnesses".

4. If CHEK-6 TV or other media wish to televise or record the testimony of any expert witness, the location of their equipment and the times for the set-up and removal of any cameras or other equipment shall be subject to the control of the Commission.

The application of television news media for camera access to a hearing was based on section 2 (b) of the Charter of Rights and Freedoms which provides for "freedom of the press and other media of communication". This has been interpreted to mean that the press and other media of communication are entitled, with limited exceptions, to have access to public hearings and trials. For example, in Canadian Newspapers Co. Ld. v. A.G. Canada (1985), 49 O.R. (2d) 557 (C.A.), Howland C.J.O., writing the judgment of the Court, stated at page 574:

> "The freedom of the press to report what transpires in our courtrooms is one of the fundamental safeguards of our democratic society.

> Justice is not a cloistered virtue and judicial proceedings must be subjected to careful scrutiny in order to ensure that every person is given a fair trial. The presence of the public, including representatives of the media, ensures the integrity of the judicial proceedings. Openness of the courts is essential for the maintenance of public confidence in the administration of justice and to further a proper understanding of the judicial system."

And further on page 575:

> "There is necessarily implicit in the concept of an open court the concept of publicity; the right of the media to report what they have heard in the court-room so that the public can be informed about the court proceedings, and public criticism, if necessary, engendered should any impropriety occur."

Canadian Newspapers Co. Ld. v. A.A., Canada was a case that involved the issue of whether the press could print the name of the complainant where the accused was charged with sexual assault. The cases of Re F.P. Publications and the Queen (1979), 108 D.L.R. (3d) 153 (Man. C.A.), Edmonton Journal v. Alberta (A.A.) (1989), 64 D.L.R. (4th) 577 (S.C.C.), and Pacific Press Ld. v. Canada (Minister of Employment and Immigration, Unreported Federal Court Judgment [1991] F.C.J. No. 313 all dealt with the access of the media to a proceeding that would otherwise have been closed to the public including the media. None of these cases dealt with "news camera access" to the proceedings.

There is no issue in the hearings into the Halliday and Cooper complaints with respect to whether or not the press and the other media of communication have access to the hearing. Section 45.45 (11) of the R.C.M.P. Act, 1986, provides:

> "A hearing to inquire into a complaint shall be held in public... ."

It was not suggested that any of the circumstances that are enumerated in the latter part of s. 45.45 (11), which may justify holding all or part of a hearing in private, apply to either the Halliday or Cooper hearings.

Only two of the cases cited by Mr. Sorochan involved television news camera coverage. New Brunswick Broadcasting Co. Ld. v. Donahoe, Unreported Nova Scotia Supreme Court Judgment No. 68444 (May 25, 1990) involved a successful application to televise the debates of the legislature. News camera access to the

proceedings of the legislature raises different issues than news camera access to the testimony of witnesses before a tribunal.

In Regina v. Squires (1989), 69 C.R. (3d) 337 (Ont. D.C.) the conviction of a television news reporter was upheld where the reporter had televised persons leaving a court room where a preliminary hearing was being conducted. There was no issue with respect to the televising the preliminary hearing itself. The accused had been convicted at trial on charge under the Judicature Act, R.S.O. 1980, c. 223, s. 67. That section makes it an offence for any person to take any motion picture or other record capable of producing visual representations by electronic means or otherwise at a judicial proceeding or of any person entering or leaving the room in which the judicial proceeding is to be or has been convened. Counsel for the appellant argued that section 67 of the Judicature Act infringed the freedom of the press bestowed by s. 2 (b) of the Charter. Mercier D.C.J. concluded that s. 67 did infringe s. 2 (b) of the Charter but that the infringement was justified by s. 1 of the Charter as being a reasonable limit prescribed by law that can be justified in a free and democratic society. Ms. Brucker advised the Panel that leave to appeal has been granted with respect to the decision of Judge Mercier. Nevertheless, it may be worthwhile to quote one observation of Judge Mercier that may have a bearing on hearings of the RCMP Public Complaints Commission. At page 354, Judge Mercier stated:

> "Moreover, one must consider that many witnesses and all jurors are in court because they are obliged to be there and consequently they ought to be entitled to reasonable privacy and/or protection. If they are to have no say in whether they are to be filmed, witnesses may not be so willing to step foreword and this would obviously have a deleterious effect on trials."

It should be noted in the above quotations from the judgment of Howland C.J.O. in Canadian Newspapers Co. Ld. v. A.A., Canada that when he described the scope of s. 2 (b) of the Charter, he spoke in terms of the right to be present and "...the right of the media to report what they have heard in the court-room...". Representatives of the television news media have the right to be present at the hearings of the Commission and they are under no limitations as to what they can report. It has not yet been held by any Canadian court that the constitutional guarantee of "freedom of the press and other media of communication" includes the right to bring television news cameras into either a court room or a hearing room.

Therefore, access to the hearing by the public, including the media and representatives of the television media is assured. It is the view of this Panel of the Commission, that the right of access to hearings of the Commission and the ability to report on the proceedings satisfies the constitutional mandate set forth in s. 2 (b) of the Charter of Rights and Freedoms.

A conclusion that the television news media do not have a constitutional right to camera access, does not necessarily mean that television news cameras should be excluded from all parts of all hearings of the Public Complaints Commission. An application for news camera access should be evaluated in relation to the purpose and objectives of the legislation pursuant to which the hearings are being conducted and from the perspective of attempting to ensure that there is fair and even-handed treatment of all of the participants in the hearing process.

Mr. Sorochan cited a number of Inquiries and Commissions in which television news coverage has been permitted including:

(a) The B.C. Securities Commission's Prime/Pezim Hearing;
(b) The Dubin Inquiry into steroid use by athletes;
(c) The Parker Inquiry into the conduct of Sinclair Stevens;
(d) The Ocean Ranger Inquiry;
(e) The Grange Inquiry into the death of infants at Sick Children's Hospital;
(f) The Niagara Regional Police Inquiry;
(g) The Dryden Inquiry into the Air Ontario Crash;
(h) The Starr Inquiry;
(i) The Estey Inquiry into the CCB and Northlands Bank failures;
(j) The West Edmonton Mall Inquiry into a roller coaster accident;
(k) The Code Inquiry into the Principal Group;
(l) The Skylink Inquiry;
(m) The Owen "Discretion to Prosecute" Inquiry in British Columbia.

Two observations may be made about these inquiries. First, there is nothing to suggest that any of these Commissions or Inquiries were compelled to permit television news coverage. Presumably, either terms of reference expressly provided for news camera access or the Commission itself decided that it was in the public interest to permit news camera access. Second, most of these inquiries were Commissions that were created for the purpose of inquiring into a single incident or

institution. Their purposes were quite different from the purpose of the permanent Public Complaints Commission established by Parts VI and VII of the Royal Canadian Mounted Police Act, 1986.

The primary objective of Part VII of the Royal Canadian Mounted Police Act, 1986 is to provide members of the public with an opportunity to have their complaints about the conduct of an RCMP officer reviewed by an independent Commission. Potential complainants must not be dissuaded from pursuing their complaints to the hearing stage because of the anxiety and apprehension of being required to give their testimony in front of the television news cameras. Many complainants will never have previously been photographed by the television news cameras. Most lay witnesses have some degree of anxiety about giving public testimony. This anxiety is likely to be increased by the presence of the television news cameras where they will have additional concerns about how they will look and how will they sound.

The prospect of television news coverage of the testimony of complainants may be important to future complainants who are considering whether or not to proceed with a complaint where it involves a sensitive personal matter and where perhaps the basis of the complaint is public embarrassment that the police have caused to the complainant. It is unlikely that such a complainant will pursue a complaint to the hearing stage if the complainant's testimony will be televised by the news media and broadcast to a much wider segment of the public and thereby cause even greater embarrassment notwithstanding that the complaint may be substantiated.

In the Halliday Hearing, counsel for the Complainant advised the Commission Panel that the complainant is extremely nervous about the prospect of having to give her testimony in front of a television news camera. Mr. McKimm submitted that the presence of television news cameras might seriously effect her ability to give evidence.

There may be future hearings where the complainant does not object to having his or her testimony televised or may wish to have it televised.

It was stated above that an application for news camera access should also be evaluated from the perspective of attempting to ensure that there is fair and even-handed treatment of all of the participants in the hearing process. Having decided that permission would not be granted to televise the testimony of the complainant,

would it be fair to permit news camera coverage of those RCMP officers whose conduct is the subject of the complaints or who will be called to testify with respect to the conduct complained against? It was argued by Mr. Sorochan that police officers are professionals who have experience in giving evidence in court and they should not be affected by the presence of television news cameras. Fairness in this context has two aspects. The officers in question might feel that it would be unfair to allow television news coverage of their testimony but to shield the complainant from similar television news coverage. A more significant consideration, however, is the perception that the television news audience might get if they only saw and heard the officers' perception of what happened and they did not see and hear from complainant's testimony. Therefore, the Panel decided news camera access will not be permitted with respect to the testimony of any officer who is named as a party or any officers who will be called to testify with respect to the actual conduct that is the subject of complaint.

The Commission was advised that a number of expert witnesses would be called as witnesses. Different considerations apply in determining whether to permit television news coverage of the testimony of expert witnesses. First, their testimony is not directly related to the perception of the conduct which is the subject of the complaint. The testimony of the expert will be opinion evidence upon matters within his or her expertise. Although the expert witness may be cross-examined on his or her qualifications and on the opinions that are expressed, the reputation and standing of the expert witness in the community is not usually at risk in the same fashion as it may be with respect to the complainant and the officers who are parties to the hearing. There is one additional factor which persuaded the Panel to permit the television news coverage of the testimony of the expert witnesses. Commission counsel had proposed to videotape the evidence that the expert witnesses would give in the Halliday portion of the hearing in order to hopefully save the transportation and accommodation costs of calling the same witnesses again in the Cooper portion of the hearing. Therefore, whereas with respect to the other witnesses, it had been argued that the presence of the cameras and any necessary additional lighting might distract the witnesses, these witnesses were going to be subject to this distraction in any event. Furthermore, these witnesses had already been advised, when they agreed to give evidence, that there testimony would be televised.

PART III: THE CAROTID CONTROL TECHNIQUE

1. USE OF CAROTID CONTROL TECHNIQUE ON CAROLINE HALLIDAY AND MICHAEL COOPER

A technique known as the carotid control technique was used by members of the RCMP with respect to two of the complainants in these proceedings, namely, Caroline Halliday and Michael Cooper, and an unsuccessful attempt was made to apply the technique with respect to the complainant, Steven Cooper. The use of the carotid control technique is a significant aspect of the complaints of both Caroline Halliday and Michael Cooper. The nature of the carotid control technique is described in greater detail in the next section of this Report. The Commission received a great deal of evidence with respect to the carotid control technique. A reader of this Report may gain a greater appreciation of the significance of application of the carotid control technique with respect to the individual complainants if the Report initially considers the various aspects of the carotid control technique itself.

In the written submission to the Commission by Mr. Morin, counsel for the appropriate officer with respect to the Halliday complaint, and in the oral submission to the Commission by Ms. Brucker, counsel for the appropriate officer with respect to the Cooper complaints, it was submitted that the Commission should not engage in a general review of RCMP policies and procedures with respect to the use of force by members of the RCMP. Mr. Sorochan, counsel to the Commission, responded to these arguments by undertaking an extensive review of the relevant legislation, Reports of Commissions that preceded the introduction of the legislation, statements made by the Solicitor General of Canada in the House of Commons when the legislation was being considered by Parliament, and judicial decisions that have interpreted the legislation since its enactment. It is not necessary for the purposes of this Report to undertake an exhaustive analysis of these submissions and the scope of the Commission's power to make recommendations with respect to RCMP policies. It will suffice to say that it must have been the intention of Parliament that the Commission would review those RCMP policies, procedures and training programs that are related to the conduct of RCMP members that is the subject of a citizen's complaint. Indeed, it would be grossly unfair to those RCMP members, who are the subject of a complaint, to divorce the examination of their conduct from the policies and procedures under which they are required to perform their duties and the training they are

provided by the RCMP in relation to the conduct which is the subject of complaint.

The purpose of the Commission in undertaking a review of the policies, procedures and training programs of the RCMP which relate to the conduct of the RCMP member that is the subject of a complaint is not to make policy for the RCMP but rather to determine whether a review of existing policies, procedures and training programs is desirable and, if it is, to make recommendations with respect to matters that should be considered during such a review.

2. DESCRIPTION AND NATURE OF THE CAROTID CONTROL TECHNIQUE

Prior to considering the specific complaints, it is necessary to understand the nature of the carotid control technique, the medical and physiological consequences that may follow from its application, the potential dangers that may accrue from its application, and the training that RCMP members receive with respect to its use.

The carotid control technique is referred to by several names. It sometimes referred to as a carotid neck restraint, the carotid hold, the "sleeper hold" or simply "carotid control".

The Commission had the benefit of hearing the testimony of several expert witnesses who testified with respect to the training of police officers in the use of the carotid control technique and the medical and physiological effects of the application of the carotid control technique.

The carotid neck restraint hold is applied to the carotid arteries, which are located on both sides of the neck. The method recommended by the RCMP training officers and most trainers is for the officer to approach the subject from the rear and place one arm around the subject's neck with the elbow in line with the subject's sternum forming a "V" with the point of the "V" in front of the subjects chin. The other arm is placed behind the subjects head to control the head and prevent it from turning or twisting. Pressure is applied with equal force on each side of the neck.

When pressure is applied on each side of the neck by the forearm and bicep of the officer, it causes a substantial reduction in the supply of oxygenated blood to the brain through the carotid arteries. Although blood supply to the brain is reduced by as much as 40%, the proper application of the hold does not stop the flow of blood to the brain. The reduced blood flow to

the brain will nevertheless cause a loss of consciousness within a matter of seconds. The estimated time before unconsciousness occurs varies from a low of two seconds to as many as 8 seconds. A proper application of the carotid hold does not compress the airway or otherwise interfere with the passage of air to the lungs. The carotid control is not to be confused with "choke hold" or the "head lock".

A "choke hold" cuts off the supply of air to the lungs by compressing the airway (windpipe) in the throat. The subject of a choke hold will have the feeling of suffocation and will usually use his or her hands to try and remove the officer's arms or hand from the throat area. This action by the subject is sometimes referred to as a "clawing" motion. When this occurs, the flight or fight syndrome pumps adrenalin into the system and this often causes the subject to struggle more violently. The use of the choke hold by RCMP officers was banned in 1979.

A "head lock" is applied by using an officer's arms to immobilize a subject's head. When it is properly applied, it neither affects the air supply to the lungs nor the blood supply to the brain.

3. PHYSIOLOGICAL EFFECTS OF CAROTID CONTROL AND THE POTENTIAL MEDICAL CONSEQUENCES THEREOF

EXPERT MEDICAL EVIDENCE:
Dr. Donald T. Reay is currently the Medical Examiner for King County including the City of Seattle, in the State of Washington and he is an Associate Professor of Pathology at the University of Washington. He has examined three deaths associated with the use of the carotid control technique by law enforcement or corrections personnel. He has also conducted empirical research on the physiological effects of the application of the carotid control. The results of this research have been published in article by Drs. Reay and Holloway entitled "Changes in carotid blood flow produced by neck compression", The American Journal of Forensic Medicine and Pathology, Vol. 3 (1982). He has also published other articles on the use of neck holds.

The subjects who participated in Dr. Reay's empirical research project were F.B.I. personnel who were in fine physical condition. One of the physiological effects on the subjects that Dr. Reay observed following the application of the carotid hold was a reduced heart rate. Dr. Reay explained that when pressure is applied

to the pressure receptors in the carotid sinus area, they send a reflex neural impulse to the heart which causes the heart to slow down and sometimes to stop.

In Dr. Reay's opinion, neck holds are potentially lethal holds because it is impossible to know the physiological characteristics of the subject and therefore it is impossible to predict the consequences that may occur from an application of the carotid control technique. In their article, entitled "Changes in carotid blood flow produced by neck compression", The American Journal of Forensic Medicine and Pathology, Vol. 3 (1982), Drs. Reay and Holloway state at pages 256-57:

> "Fatal consequences of neck holds can be anticipated because of their physiological effects. Pre-existing natural disease increases the likelihood of a fatal outcome, even when a hold like the carotid sleeper is applied correctly. Underlying cardiac disease such as coronary artery disease and cardiac rhythm disorders are particularly vulnerable to reflex carotid sinus stimulation and hypoxia. Diseases that affect the carotid arteries, most commonly arteriosclerosis, can significantly narrow vessel lumens. Pressure applied to a diseased vessel can dislodge artherosclerotic plaque and produce fatal strokes. Compression of the vessel can damage the intimal lining of the vessel wall and cause an occluding thrombus to form and produce cerebral infarcts"

Drs. Reay and Holloway proceed to identify five groups of people who may be at a greater risk of death from a neck hold. These include:

1. Men over the age 40 because the incidence of coronary artery disease increases sharply after the age of 40.
2. Persons with a history of a seizure disorder.
3. Mentally disturbed persons, particularly the manic depressive psychotic in the manic phase.
4. Persons using street drugs and alcohol.
5. Persons taking prescription drugs because the side effects of many prescription drugs may predispose their users to cardiac arrhythmias.

In his capacity as Medical Examiner for King County in the State of Washington, Dr. Reay referred to three deaths that he had investigated where the application or misapplication of the a carotid hold was the proximate cause of death. In the first two of these cases, the evidence suggested that the carotid hold was either misapplied or it had gone from a carotid hold to a choke hold because in both cases there had been a

fracture of the thyroid cartilage which indicates that the victims died from strangulation. In the first case, the subject was a 58 year old person and death was attributed to cardiac arrest as a consequence of the subject's pre-existing arteriosclerotic hypertensive heart disease. In the second case, the subject was a 35 year old muscular man with no physical problems. Prior to the application of the carotid hold, he had been given lithium to control a manic depressive psychosis. In the third case, the carotid hold had been applied by well-trained person who was an instructor in the use of the carotid control technique at the police academy in the State of Washington. The autopsy did not reveal any damage to the airway or any pre-existing physical or medical conditions. Dr. Reay concluded that the carotid control technique had been properly applied. The application of the hold caused the heart to stop.

Dr. Reay also provided the Commission with information he had collected with respect to other deaths and injuries that had occurred in the United States after the application of the carotid hold by police officers or prison personnel. One case involved an instructor at a Florida Police Academy who suffered a partial paralysis after the application of the hold in a training exercise. The paralysis was apparently caused by a stroke.

The Commission also received evidence and information with respect to several deaths and injuries that have occurred in Canada following the application or misapplication of the carotid control technique by police officers.

THE JURIS R. LAUFERS CASE

The Report of the Board of Inquiry into the complaint of Juris R. Laufers under the Metropolitan Toronto Police Force Complaints Act, 1984 was filed with the Commission. The report refers to the following potential consequences that may occur following an application of the carotid hold:

1. Plaque may be dislodged from the arteries of a person suffering from arteriosclerosis of the arteries and this may cause a stroke.
2. The structures in the neck may be injured and tissue swelling may cause the airway to the lungs to be cut off.
3. The loss of consciousness by an intoxicated person may impair reflex actions designed to guard the airway to the lungs.

THE LORNE HALLDORSON CASE

The Autopsy Report and the Recommendations of the Public Inquiry into the death of Lorne Halldorson, conducted under the Alberta Fatality Inquiries Act, were filed with the Commission. The Report of the Inquiry describes the circumstances in which the death occurred. Two RCMP officers were grappling with Mr. Halldorson in a ditch at night in an attempt to restrain him after he had assaulted one of the officers without provocation. Mr. Halldorson lost consciousness following the application of carotid hold. He did not regain consciousness and he was pronounced dead upon arrival at the High Prairie Hospital. The medical cause of death was found to be "Cerebral Hypoxia and Cardio Respiratory Arrest". The Autopsy Report attributed the cause of death to be "...the result of the application of pressure around the neck (throttling)." The report states that several mechanisms may be involved in causing death by throttling. These were summarized as follows:

"1. Airway obstruction. The upper airway may be occluded by backward pressures on the epiglottis....This respiratory obstruction produces a truly asphyxial form of death."

"2. Carotid occlusion. Compression of the carotid arteries (the main blood supply to the brain), deprives the brain of blood and the oxygen it carries, rapidly rendering the subject unconscious and, if severe or prolonged, leads to death."

"3. Vagal Inhibition. Pressures on structures in the neck may lead to neurological reflexes which may slow or stop the heart thereby stopping blood flow to the brain and causing sudden death."

The Inquiry Report found that the officer who applied the hold acted in good faith, conscious of his responsibilities for the health and the safety of his prisoner and accordingly the manner of death was found to be accidental.

THE GASTON HARVEY CASE:

A copy of the Inquest Report into the death of Gaston Harvey who died in 1986 in Quebec at the age of 38 was filed with the Commission. This death occurred when members of the Quebec Provincial Police were called to intervene at a labour dispute and demonstration involving the Manoir Richelieu. A dispute arose between several police officers and Mr. Harvey who was moderately intoxicated. A neck hold was placed on Harvey for the purpose of getting him into a police

car. Harvey continued to struggle and a second neck hold was immediately placed on Harvey to get him out of the police car for the purpose of handcuffing him. It is apparent from the report that Harvey lost consciousness after the second application of the neck hold. He was placed in a police van for a three or four minute ride to the police station. He was subsequently taken to hospital where death was pronounced. Several autopsies were performed. One indicated that the brain suffered from a lack of oxygen. The Inquest Report states:

> "All the experts acknowledged that in these places, or very near to them are found the carotids, the carotid sinuses, the carotid bodies and the vagus nerve. The neck is thus an extremely dangerous area, for pressure on one of these structures could have serious consequences for the heart rate and/or respiratory rate, in addition to provoking cerebral ischemia (lack of blood).
>
> "All the experts recognized that the neck hold had in this case caused such pressure; however, they were not able to specify either its intensity or its duration."

The Inquest Report found that the immediate cause of death was an indeterminate neck hold which led to cardio-respiratory arrest and all the disorders leading to death and that the neck hold had been applied by an officer who did not have specific training in the use of the carotid control technique.

The Inquest Report included recommendations that:

1. Every police officer in Quebec be informed of the dangers inherent in the neck hold and of its unforeseeable consequences.
2. No police officer apply such a neck hold without adequate training.
3. Training should be provided on a continuing basis.

THE ERIC LUTHER CASE:

A copy of the Autopsy Report and a transcript of the proceedings of the Inquest into the death of Eric Luther who died in British Columbia in 1977 was filed with the Commission. The death occurred when an RCMP officer attempted to subdue an extremely violent person who was suffering from a mental illness. A reading of the testimony of the officer suggests that he attempted to use a carotid control technique but he was unable to apply the hold because of the extremely violent resistance of Luther. The officer then resorted to what has been described by some witnesses before the Commission as a "C-clamp" or "tigerclaw" hold where one

hand is used on the front of the neck. Consequently, the Luther case is not relevant to a discussion of the carotid control technique.

Several deaths in the United States have been attributed to the use of the carotid control technique. In addition to the testimony of Dr. Reay, information about other deaths in the United States that occurred after the application of the carotid control technique was provided to the Commission by Mr. Larry H. Smith, an officer and instructor at the San Diego Police Academy. The Commission was also presented with newspaper clippings and magazine articles with respect to deaths in the United States that apparently occurred after the application of a carotid control technique. The Commission does not doubt that these deaths occurred in close proximity to the application of the carotid control technique. But without further evidence about the surrounding circumstances, the medical condition of the deceased, the training of the officer who applied the hold and the manner in which the hold was applied, the Commission cannot draw any inferences from these deaths.

FINDINGS:

(A) The use of the carotid control technique, even when properly applied, carries a small but significant risk of death or serious bodily harm. Death or bodily injury may occur where the hold

(i) is initially applied in a proper manner but the struggles of the subject cause the hold to slip or cause injury to the subject;

(ii) is properly applied but the subject is suffering from certain physiological or medical conditions.

(B) The use of the carotid control technique is a preferable alternative to the use of a firearm or a blow to the head by a baton or similar object.

4. TRAINING OF RCMP OFFICERS IN USE OF CAROTID CONTROL TECHNIQUE

(a) TRAINING OF RCMP RECRUITS

The Commission Panel heard evidence with respect to the training of RCMP recruits from:

Assistant Commissioner Legasse, who is presently the Director of Training for the R.C.M.P.;

Raymond Richard Hale, a retired member of the RCMP, who spent 15 years as an instructor at the RCMP Training Academy in Regina and who was in charge

of the self-defence unit for a period of years commencing in 1978;

Cpl. Roger George Franklin who is currently a self-defence instructor at the RCMP Training Academy in Regina;

Douglas William Farenholtz, a former member of the RCMP who spent nine years in the RCMP Training Academy in Regina before accepting a position with the Justice Institute of British Columbia in 1981 where he is responsible for the development and presentation of physical training programs.

The Commission was provided with a copies of the "RCMP Academy Basic Recruit Training Course Orientation and Reference Manual", excerpts from the "Course Training Standard" of the Basic Recruit Training Course and "R.C.M.P. Academy 'Depot' Division Self Defence Handout".

The Self-Defence Unit of the "RCMP Academy Basic Recruit Training Course Orientation and Reference Manual", includes the following description of come-along techniques including carotid control techniques at page 7-14:

> "ii) During the police defence segment of the program, recruits will be instructed in the removal, come-along/controlling and entry techniques and ample time is provided to practice and perfect same. Also taught are Carotid Control techniques which are an integral part of a police officer's repertoire of self-defence methods for controlling uncooperative or violent suspects. Although these latter techniques are fairly safe there is always a risk involved when rendering an individual unconscious, therefore instruction will also include the necessary action required of a police officer to ensure that the suspect regains consciousness."

The "Course Training Standards" of the RCMP Basic Recruit Training Course are intended for use by instructors in making up their lesson plans. Copies are not given to the recruits to read. The Self Defence Chapter, Section E, is entitled "Police Defence Techniques (Removal, Come-Along/Controlling and Entry Techniques)". Paragraph 2 uses much the same language of the Manual quoted above. In addition, it states:

> "Although carotid techniques are fairly safe there is always a risk involved when rendering an individual unconscious. This danger becomes more prevalent in older people, especially those with a previous history of cardiac disease. In addition, heavy smokers, heavy drinkers and those who are physically unfit and have poor diets are also at

risk. Such individuals often have high blood pressure and/or hardening of the arteries which make them more susceptible to heart failure should they be rendered unconscious by carotid control techniques."

Paragraph 3 of the Course Training Standard outlines the content of some of the sessions. Session (b) has particular relevance to the Caroline Halliday and the Michael Cooper complaints. This session includes:

"Putting a resisting, arrested violator into a police car, or through a doorway, or into a cell:"

A number of techniques are listed underneath this heading including carotid control. Mr. Hale testified that order of listed techniques did not suggest the order in which the techniques should be tried to accomplish the objective. A member can use whichever technique the member thinks is most appropriate at the time. Furthermore, he testified that the carotid control technique is taught as a come-along technique that may be used even when there is no perceived danger or risk to the officer from the subject. Cpl. Franklin testified that he teaches RCMP members to use a continuum of force. When it is possible, an officer should begin by using verbal suggestions and then progress up to lawful commands, gentle restraint such as taking the person by the arm, and thereafter, if necessary, using pain holds and pressure points, ground fighting and, carotid control. This is particularly relevant to the Michael Cooper complaint. The evidence with respect to that complaint is that Constable Leach applied the carotid control technique as a first resort without any verbal communication with Michael Cooper. In cross-examination of Mr. Hale by counsel for Constable Leach, Mr. Hale agreed that it was absolutely critical for a police officer at a scene to make sure that he is in control and that he or she gains control quickly and as effectively as possible with the least amount of violence.

A Self Defence Handout was formerly given to recruits. According to Mr. Hale's testimony, distribution of the handout was discontinued when parts of it became outdated. Recruits now receive all of their instruction orally. The Self Defence Handout began on page 8 by describing the carotid control technique as a "method to control uncooperative and/or violent suspects" and as "relative passive methods of gaining control or of rendering an individual unconscious, if necessary". After remarking that the "indiscriminate use by a few individuals could conceivably result in them being excluded as a means of Self-Defence", the handout proceeds to outline some of the primary dangers in using the carotid control technique. These include

i) applying the technique for too long; ii) improper application of the technique; iii) improper takedown; and iv) the physical condition of the suspect. Under the latter heading, it states:

> "The possibility exists that the heart may stop beating when a Carotid Control Technique is applied. Normally it resumes beating in seven to ten seconds, however, there is always a chance that it will not. This is more prevalent in elderly people, especially those who are heavy drinkers. Such individuals often have high blood pressure and/or hardening of the arteries."

On the subject of medical examination the Handout states:

> "Force policy does not state that a subject who is rendered unconscious by a Carotid Control Technique must be examined by a medical practitioner...."

The Handout states:

> "an individual who complains of an injury, following the application of one of these techniques should be checked by a Doctor."

Mr. Hale testified that recruits must be certified in first aid and "C.P.R." before they leave the academy.

Several of the RCMP members who testified before the Commission including Constables Macdonald and Leach stated that they were aware that the carotid control technique could have harmful consequences including death if the technique was misapplied or if the hold was applied was too long but they were unaware of potentially dangerous consequences that could occur after a proper application of the carotid control technique. In particular, some of the officers were not aware that persons who have certain physiological or medical conditions may be at a greater risk of suffering harmful consequences from the application of the carotid control technique.

Corporal Franklin testified that when the number of hours devoted to self-defence training was reduced from 80 hours to 69 hours, some self-defence techniques could not longer be taught. Among the techniques that are no longer taught are "finger locks" and wrestling. In Corporal Franklin's opinion the finger locks are an excellent method of obtaining a subjects compliance.

FINDINGS:

(C) No distinction is made in the Recruit Training Program of the RCMP between the use of carotid control
   (a) for the purpose of self-defence of the officer or the defence of others from physical attack; and
   (b) for the purpose of controlling uncooperative suspects.

(D) RCMP members are not adequately educated about the risk of death or serious injury that may follow the proper application of the carotid control technique.

(b) IN-SERVICE TRAINING AND RETRAINING

Several of the longer serving officers who testified before the Commission acknowledged that they had never been trained in the use of the carotid control technique notwithstanding that the use of the carotid control technique was for a period of time expressly authorized by the Operations Manual. The technique had not been taught during their recruit training and they had not received any in-service training with respect to the use of carotid control.

The officers who were trained in the use of carotid control as part of their recruit training testified that they had not received any in-service training or evaluation with respect to their use of the carotid control technique since their recruit training. Constable Macdonald, for example, testified that he had not received any in-service training with respect to the carotid control since his recruit training in 1981 other than being provided with the opportunity of viewing a videotape several days prior to the commencement of these hearings. Constable Leach testified that he had not been required to practice other come-along of compliance holds since his initial recruit training. Furthermore, he testified that he had not received any update on the use of other come-along holds. Consequently, it became apparent from his testimony that the carotid hold had become the hold of first instance for Constable Leach.

Both Corporal Franklin and Mr. Hale, acknowledged that the Force does not have in-service training or retraining programs to ensure that members maintain their skills in the use of the carotid hold and other come-along techniques. Mr. Hale has produced a video on the application of the carotid hold as well as some other self-defence techniques. Mr. Hale acknowledged that some Divisions or detachments might put on their

own programs that may include elements of self-defence training.

The Commission was provided with a copy of an excerpt from the Vancouver City Police Department Training Manual with respect to the need for in-service training with respect to carotid neck restraint. It provides:

> "Police officers should remember it, however, intensive in-service training programs should also be attended to ensure that all potential users of the neck restraint hold are both knowledgeable and technically competent in its application."

RECOMMENDATION:

1. **The RCMP consider the development and provision of in-service training programs in the use of compliance techniques and come-along holds including the carotid control technique for officers who are expected to operate in the field. These programs should be provided at regular intervals and should include an evaluation of an officer's skills, retraining where required, and instruction with respect to new information and techniques.**

(c) PROFESSIONAL DEVELOPMENT OF TRAINING STAFF

The six month R.C.M.P. Recruit Training Program is one of the longest recruit training programs among professional police forces. The program has developed an excellent world-wide reputation. The reputation of the program and high quality of its graduates can only be maintained if the training staff have the opportunities to continue their professional development and to reflect this development in the content of the recruit training program. This inquiry has focused upon the Self-Defence component of the Recruit Training Program. It is important that the training officers in this component of the program have opportunities to learn from experts in related fields and about developments in other progressive police forces. Without new ideas and the introduction of new knowledge and techniques, the program will stagnate as former students become instructors and simply pass on what they learned without any advances.

The Commission heard evidence that until recently, the self-defence instructional staff at the Training Academy had not had regular opportunities to attend seminars and other educational programs where they would meet experts from other police forces and other countries and where they could learn about new information and equipment with respect to self-defence and compliance techniques.

RECOMMENDATION:

2. RCMP Training staff should be encouraged to develop their knowledge and skills, which are related to their training responsibilities, by attending seminars, and training programs, and reading current literature and journals. In particular, they should be encouraged to attend programs where representatives of other police organizations are making presentations.

5. RCMP POLICY WITH RESPECT TO THE USE OF THE CAROTID CONTROL TECHNIQUE

The "RCMP Operations Manual" contains most of the policies of the RCMP that apply to field operations of the RCMP. A copy of the RCMP Operations Manual is located in every detachment office. Prior to 1990, Appendix III-2-1 of the Operations Manual contained several paragraphs about the carotid control technique. One paragraph described the three authorized techniques of applying carotid control, another paragraph described "Safety Precautions" that should be followed when using the carotid control technique and the final paragraph described "First Aid" measures that should be taken when a person has been rendered unconscious. The introductory paragraph stated:

> "a. The techniques in this appendix use the application of pressure to the carotid arteries as an effective means of restraining a violent person."

The paragraph on Safety Precautions included the following provision:

> "1. Prolonged application of pressure may result in a dangerous shortage of oxygen to the brain with resultant brain damage or ultimately death."

Ms. Brucker, counsel for the appropriate officer, advised the Commission that the Operations Manual was "down-sized" in late 1989 or early 1990. One of the objectives was to remove material that was duplicated elsewhere including matters related to training. The above mentioned paragraphs that pertained to the carotid control technique were removed from the Operations Manual as part of the "down-sizing".

At the present time, the Operations Manual is silent with respect to the carotid control technique.

The above mentioned paragraphs that have been removed did not provide much guidance to RCMP members with respect to the circumstances in which it was

appropriate to use the carotid control technique. The introductory paragraph only stated that it was "an effective means of restraining a violent person." The only warnings that were given with respect to its use were that members should avoid compressing the windpipe because that could cause fatal injury by blocking the passage of air to the lungs and that prolonged application could cause a dangerous shortage of oxygen to the brain with resultant brain damage or death. The policy did not warn officers of any of the dangerous consequences, which are discussed in an earlier section of this Report, that may flow from a proper application of the carotid control technique.

6. REPORTING USE OF THE CAROTID HOLD IN FIELD OPERATIONS

If an RCMP officer uses a firearm, there is a requirement that a written report be prepared. There is no similar requirement with respect to the use of the carotid control technique. Without the existence of written records, it is difficult to determine the frequency with which the carotid control technique is used and the physical or medical consequences, if any, that occur from its use. On the basis of the officers who testified before the Commission, some officers use the carotid control technique more frequently than other officers. The absence of such records makes it difficult for commanders to determine whether the carotid control technique

(a) is being used in inappropriate circumstances by an officer,
(b) is being used more frequently by particular officers,
(c) is being used more frequently in specific geographic areas.

The Report to Crown Counsel with respect to the criminal investigation into the conduct of Constable Macdonald involving the complaint of Caroline Halliday did not contain any reference to the application of the carotid hold to Caroline Halliday.

RECOMMENDATION:

3. The RCMP consider the development and use of a form on which any use of the carotid control technique will be recorded and which will enable the commanding officer of each detachment to periodically review the use of the carotid control technique by RCMP members of the detachment.

7. REVIEW OF RCMP POLICY WITH RESPECT TO THE USE OF THE CAROTID CONTROL TECHNIQUE

The Commission recommends that the RCMP conduct a review of its policy with respect to the use of the carotid control technique. In conducting this review, consideration should be given to the growing body of knowledge that is referred to above concerning the potential physiological effects of using the carotid control technique, the new policies and training programs that other law enforcement agencies have developed with respect to the use of the carotid control technique, and the concerns that have been expressed by courts and other commissions of inquiry with respect to the use of this technique.

(a) POLICIES OF OTHER POLICE AGENCIES

The Commission received evidence and information with respect to policies concerning the use of the carotid control technique that have been developed by other police forces or agencies that are responsible for the enforcement of the criminal law. Descriptions of and quotations from these policies are set forth below. The Commission believes that these policies may provide worthwhile information to those within the RCMP who have the responsibility of revising existing policies and developing new policies.

ONTARIO SOLICITOR GENERAL'S POLICY

On December 18, 1990, Carl R. Johnston, the Assistant Deputy Minister to the Solicitor General of Ontario sent a memorandum to all Chiefs of Police and the Commissioner of the Ontario Provincial Police with respect to the use of the carotid restraint hold. That memorandum stated:

> "Concern has been expressed recently about the dangers inherent in using the carotid restraint. This is to remind you that the carotid restraint should only be used in accordance with the following principles:
>
> 1. An officer should not use the carotid restraint without proper training.
>
> 2. Even if an officer has been trained, and continues to possess the skill and confidence to apply the restraint properly, the carotid restraint should be used only as a last resort as an alternative to the baton or revolver. This restraint could cause permanent injury or death, and officers should be aware of its possible consequences. Dr. Jim Young, Chief Coroner for Ontario, has warned: "Carotid restraint is a high level of force to be used only where there is a

danger to the life of an officer or another person and is only preferable to a blow on the head with a baton or the use of a firearm.

3. Where an officer has not recently been trained or is unclear about how to use the carotid restraint, the officer should review the Carotid Restraint Training Manual which has been prepared by the Ontario Police College."

METROPOLITAN TORONTO POLICE FORCE

The Report of the Board of Inquiry into the complaint of Juris R. Laufers under the Metropolitan Toronto Police Force Complaints Act, 1984 includes a quotation from a routine order issued by the Metropolitan Toronto Chief of Police on January 4, 1991 which incorporates the above quoted memorandum from the Ministry of the Solicitor General.

CITY OF VANCOUVER POLICE DEPARTMENT POLICY

The Commission was provided with a copy of the policy of the City of Vancouver Police Department on neck restraint holds. It provides:

"The Vancouver Police Department supports the use of the neck restraint hold only if the following criteria are met:

1. There exists a situation demanding immediate control over a violent person.
2. No lower level of force would be appropriate in the given situation.
3. There is no reason to believe that the person being subdued will suffer any injury.
4. The officer applying the technique has been properly trained.

WASHINGTON, D.C. POLICE FORCE

The Commission was provided with a copy of a special order made by the Council of the District of Columbia dated December 31, 1986 entitled "Limitation on the Use of the Chokehold Act of 1985" Despite the reference in the title to "chokehold", it is clear that the special order pertains to the use of the carotid neck restraint by members of the Washington D.C. Metropolitan Police Department. The special order provides in part:

"The following policy and procedures shall govern the use of the carotid neck-restraint technique by sworn members of the department.

"Members shall:

1. Be prohibited from utilizing the bar-arm (choke) hold for any purpose.
2. Utilize the carotid neck-restraint technique

only under those circumstances and conditions wherein the use of force is reasonable or necessary to protect the life of a civilian or a law enforcement officer, and has been effected to control or subdue an individual.

3. Be certified in First Aid/Carotid Recovery techniques as a prerequisite to using the carotid neck-restraint.
4. Have satisfactorily completed the Training Division's course on "Use of Carotid Neck-restraint" before using the hold.
5. Refrain from applying the carotid neck-restraint repeatedly on a suspect.
6. Immediately transport these suspect to an emergency medical or acute care facility for examination, treatment or observation in the event the recipient of the carotid neck-restraint shows signs of injury, complains of injury, appears to be under the influence of alcohol or drugs, shows signs of acute mental disturbance, or becomes unconscious during or following application of the hold.
7. Execute P.D. Form 313 (Injured Prisoner Report... .
8. Execute P.D. Form 251 with the classification reflecting both the incident/offense and the use of the carotid neck-restraint, when the hold is used to subdue or control and individual. All other aspects of these case shall be handled in accordance with General Order 901.1, Part IIIC3f (Use of Firearms or Other Service Weapons)."

(b) TRAINING MANUALS OF OTHER POLICE FORCES

The Commission received evidence and information with respect to training programs of the Ontario Police College and the Vancouver City Police Department in relation to the carotid control technique. The Commission believes that these programs reflect policies that may provide worthwhile information to those within the RCMP who have the responsibility of revising existing policies and developing new policies. Descriptions of and quotations from these policies are set forth below.

ONTARIO POLICE COLLEGE

The Report of the Board of Inquiry into the complaint of Juris R. Laufers under the Metropolitan Toronto Police Force Complaints Act, 1984 includes the following quotation from Ontario Police College Self-Defence Training Manual (April, 1988):

"1. The use of the Carotid Restraint to control a suspect is a potentially dangerous tactic.

2. It should only be used where there is immediate danger to the life of an officer or another person.
3. It should be used only where there is no less violent means of controlling a suspect.
4. Only the Carotid Restraint, as taught at the Ontario Police College and as outlined in this manual, should be employed.
5. Just as firearms and baton techniques should be reviewed regularly, this material should also be reviewed. The hold or any neck hold should never be used if any doubt exists about your ability to properly apply it.
6. If the technique is employed, the officer in charge should be made aware so that the suspect's condition can be monitored if he is held for any period of time in your force's cells.
7. You must also be prepared to use cardiopulmonary resuscitation.
8. You may be called upon to justify the use of this technique."

VANCOUVER CITY POLICE DEPARTMENT

The Commission was provided with a copy of an excerpt from the Vancouver City Police Department Training Manual with respect to carotid neck restraint. It states:

> "The neck restraint hold should not be used merely to make the person more manageable or to save time in making an arrest. It must be emphasized that the use of force at the neck restraint level is to be used only in unusual situations. Neck restraint should only be used as a last resort of gaining control over an offender due to the inherent risks involved in its applications, as indicated under "Effects and Inherent Risks".

(c) JUDICIAL FINDINGS

In Drda v. The Queen, an Unreported Judgment of the British Columbia Supreme Court, Vancouver Registry No. CC891894 (November 16, 1990) the accused was charged with impaired driving and refusing a lawful demand to provide a breath sample after colliding with a stationary police car. After produced his driver's licence and vehicle registration, the accused began to walk away from the scene. In response to the officer's command that Drda remain at the scene, Drda told the officer that he could go anywhere he wanted. When the officer grabbed Drda and Drda resisted, the officer applied a carotid neck restraint hold that rendered Drda unconscious for about 10-15 seconds. The trial judge acquitted Drda of impaired driving but convicted him of refusing to provide a breath sample after a

lawful demand. On appeal to the British Columbia Supreme Court, Huddart J. allowed the accused's appeal and quashed the conviction on the basis that the unwarranted application of a neck restraint hold raised a reasonable doubt whether Mr. Drda had a reasonable excuse for refusing to provide a breath sample. Huddart J. stated:

> "Nevertheless, the choke-hold and subsequent unconsciousness endured by Mr. Drda deprived him of his liberty and fundamental dignity as an individual. In my view, this invasion of his rights was neither necessary nor reasonable given the nature of the situation. Although Mr. Drda was unpleasant, the evidence does not suggest that he was attacking or threatening either of the officers in any way. There is no indication that a lesser form of restraint would not have worked just as well. Although Constable Carter had common law authority to detain the appellant, he did not have the right to effect this end at any cost. The grossly excessive, unwarranted use of a choke-hold to render Mr. Drda unconscious, took this act beyond the scope of police powers at common law and rendered it unlawful."

Although Huddart J. uses the term "choke-hold" in the quoted paragraph, it is more likely, based on the judgment of the trial judge, that the officer applied the carotid control technique.

(d) 1984 ALBERTA PUBLIC INQUIRY RECOMMENDATIONS

Two recommendations were made following the 1984 Alberta Public Inquiry into the death of Lorne Halldorson following the application of the carotid hold by an RCMP officer. First, it was recommended that a review be undertaken by the RCMP to determine whether it was appropriate to apply the carotid control technique where it was impossible for the officer to tell whether the subject had lapsed into unconsciousness because of darkness and being on the ground. Second, it was recommended that a review be undertaken by the RCMP to determine if there should be mandatory communication between officers as to what each is doing when both are engaged in restraining the same subject. These recommendations were reviewed by the Training and Development Branch of the RCMP. The response by the RCMP, recorded in a memorandum dated 84-08-03, stated:

> "It would be most difficult, if not impossible, to limit the circumstances under which a carotid control should be applied. Instruction in the application of carotid controls is provided to control violent, resisting persons when no lesser

means of force will do. Our members are trained in the use of force and this training impresses on them the requirement to use the appropriate level of force for a given situation. In many cases, carotid controls are used as an alternate to a greater degree of force, such as stricking (sic) with a baton or use of a firearm."

"Consequently, we are of the opinion that rather than restricting the hold...it is far better for our members to be well trained to:

1) correctly applying a neck restraint,
2) properly understanding how much force to use,
3) thé physiological effects to the body,
4) when to conclude the restraint from a safety point of view, and
5) to ensuring proper after care in the event of unconsciousness."

FINDINGS:

(E) The response of the Training and Development Branch of the RCMP to the recommendations of the Halldorson Inquiry does not adequately recognize the potentially dangerous consequences that may flow from a proper application of the carotid control technique and the response misplaces the emphasis that should exist in the training programs of the RCMP on potentially dangerous consequences that may flow from the use of the carotid control technique on people who may suffer from various physiological or medical conditions that will be unknown to the RCMP member.

(F) The use of the carotid control technique is a preferable alternative to the use of a firearm or a blow to the head by baton or similar object.

RECOMMENDATIONS:

4. The RCMP should review the growing body of knowledge with respect to the physiological and medical effects of applying the carotid control technique, the policies and training manuals that have been developed by other police forces and law enforcement agencies and the concerns expressed by courts and other commissions of inquiry and revise and develop its policies and training programs with respect to the use of the carotid control technique having particular regard to

(a) its use when RCMP policy otherwise authorizes the use of lethal force.

(b) the safety of the officer or other persons who may be in danger by reason of the conduct of the person on whom it is proposed to use the carotid control technique;

(c) the availability and suitability of other methods of effecting an arrest or achieving compliance with the lawful commands of an officer that less potential to cause harm; and

(d) not using the carotid control technique either as a method of merely controlling an uncooperative suspect or as a come-along technique where a potentially less dangerous means of accomplishing the RCMP member's objective may be used.

5. The RCMP consider reintroducing its policy with respect to the use or application of the carotid control technique and any revisions of this policy into the RCMP Operations Manual or other document where it will be readily available to all members of the RCMP.

6. RCMP Members should be advised of the potentially dangerous consequences that may occur even from a proper application of the carotid control technique.

7. The self-defence component of the Recruit Training Program be reviewed and, if advisable, revised having regard to the factors enumerated in Recommendation Four.

PART IV: COMPLAINT BY CAROLINE HALLIDAY (MILLER)

Since the date of the complaint, the complainant has been married and her name is now Caroline Halliday. This report will refer to the complainant as Caroline Halliday.

Caroline Halliday's complaint was recorded on a Form 1442. The complaint named Constable Glen P. Macdonald as the subject of the complaint. The substance of the complaint, as recorded on Form 1442, was that the complainant was upset with Constable Macdonald's conduct and lack of respect for the complainant. Particulars of her complaint are set forth in a letter to the RCMP dated November 6, 1989. Her primary complaint is that the application of the carotid control technique on her by Constable Macdonald was an unreasonable and excessive use of force.

An internal investigation of Caroline Halliday's complaint was undertaken by the RCMP. By a letter dated February 14, 1990, Chief Superintendent A.G. Clarke informed Caroline Halliday that he had concluded that Constable Macdonald was acting within the law to arrest her and that he was unable to determine if a breach of the RCMP Code of Conduct had occurred.

Caroline Halliday was not satisfied with the disposition of her complaint by the RCMP and by a letter dated February 20, 1990, she requested the Commission to review her complaint.

On November 26, 1990, the Chairman of the Commission issued a Notice of Decision to Institute a Hearing into the complaint of Caroline Halliday.

1. THE FACTUAL BACKGROUND TO THE COMPLAINT

The progression of events that led to the complaint by Caroline Halliday began when Constable Macdonald stopped Caroline Halliday for a traffic light offence in the early morning hours of November 4, 1989. This was followed by a 24 hour suspension of her driver's licence, an arrest and finally to the attempted application of the carotid control technique on Caroline Halliday by Constable Macdonald.

Prior to the occurrence of these events, Caroline Halliday had spent the evening in Sidney, British Columbia. She spent the first part of the evening at the Army and Navy Club where she was employed on a part-time basis. While she was at the Army and Navy Club, she consumed a single drink of rye and water. She left the Club at approximately 12:30 a.m. and proceeded to a cabaret called "Images". While she was at "Images", Kenneth Halliday provided her with a drink of rye and water. Somebody also provided her with drink of rye and coke but she only had one or two sips and she did not finish the drink. She left "Images" at approximately 2:20 a.m. and commenced to drive home alone in her car. She proceeded west along Beacon Avenue in Sidney and stopped at the intersection of Beacon Avenue and Highway 17 which is controlled by a traffic light. She made a left turn from Beacon Avenue onto Highway 17 against a red light. Constable Macdonald observed Caroline Halliday's vehicle make the illegal left turn. He activated the police car's emergency lights and pursued the vehicle. Caroline Halliday stopped her car on the shoulder of Highway 17 and Constable Macdonald parked his police car behind Caroline Halliday's car. When questioned by Constable Macdonald, she acknowledged that she had gone through

the red light. During this conversation and while the complainant was producing her driver's licence and vehicle registration, Constable Macdonald testified that he smelled the odour of alcohol and he inquired whether she had been drinking that evening. She replied that she had consumed two drinks.

2. **THE 24 HOUR LICENCE SUSPENSION:**
Constable Macdonald testified that after his initial conversation with Caroline Halliday, he was "fairly certain" that he was going to make a roadside suspension of her driver's licence but he wasn't sure of the practice of the Sidney Detachment with respect to transporting a woman after suspending her driver's licence. Therefore, he went back to his police car and radioed the detachment office for advice. Corporal Bouwman advised him that he should notify the radio dispatcher of the time and mileage reading on his car's odometer before transporting the woman and again when the trip to her destination had been completed.

Upon returning to Caroline Halliday's car, Constable Macdonald requested her to turn off the lights of her car, get out of her car, lock the vehicle, and to accompany him to his police car where he requested her to sit on the passenger side of the front seat. Constable Macdonald sat on the driver's side of the front seat. He advised her that in his opinion she was under the influence of alcohol and he requested her to surrender her driver's licence pursuant to section 214 of the British Columbia Motor Vehicle Act, R.S.B.C. 1979, c. 288. He also informed her of her right to counsel under the Canadian Charter of Rights.

Section 214 (2) of the Motor Vehicle Act provides:

> "(2) A peace officer may, at any time or place on a highway or industrial road when he has reasonable and probable grounds to believe that a driver's ability to drive a motor vehicle is affected by alcohol, request the driver to drive the motor vehicle, under the direction of the peace officer, to the nearest place off the travelled portion of the highway or industrial road and there to surrender his driver's licence."

It is not necessary, for the purpose of considering the complaint of Caroline Halliday that Constable Macdonald used excessive force, to determine whether or not Constable Macdonald had reasonable and probable grounds to believe that Caroline Halliday's ability to drive a motor vehicle was affected by alcohol. Nevertheless, the circumstances of the suspension have a bearing on what transpired later. The grounds cited by Constable Macdonald in his testimony for suspending her licence

included his observation of Caroline Halliday proceeding against a red light, her statement that she had consumed two alcoholic beverages, and the odour of alcohol. He also testified that there was a slur in her speech, her eyes were bloodshot and that when she walked from her car to the police car, her balance was somewhat unsteady. By his testimony, there was nothing else in her driving that would suggest that her ability to drive was affected by alcohol. Constable Macdonald never requested Caroline Halliday to perform any sobriety tests. She produced her driver's licence and vehicle registration without difficulty and she did not have any difficulty turning off the lights of her car, getting out of her car, and locking her car at the request of Constable Macdonald. The alleged unsteadiness on her feet while she was walking along the side of the road in the middle of the night in an unlighted area, and the alleged redness of her eyes may have been attributable to factors other than impairment by alcohol.

Caroline Halliday was surprised and very emotionally upset by the demand that she surrender her driver's licence. She could not understand why Constable Macdonald had taken such action. She kept asking how he could do this to her. She expressed concern to Constable Macdonald that the prohibition might adversely affect her career and employment as a nurse. Her evidence suggests that it is unlikely that she understood the legal significance and consequences of a 24 hour licence suspension and suggests that she may have thought that the licence suspension constituted a criminal charge. It was only later, after other officers arrived at the scene, that Auxiliary Constable Geddie explained to her that she would not be taken to jail and that she would be taken home. When she understood this, she calmed down.

Constable Macdonald made several attempts to explain to Caroline Halliday why he was prohibiting her from driving for 24 hours but she kept interrupting his explanation. After several minutes, he gave up trying to give her an explanation. In his testimony, he stated:

> "...I set my shoulder in a fashion like this and just -- it would give her indication that I really wasn't interested in discussing the matter any further with her and that I was going to start to write the ticket out."

Prior to the events that are described below, Constable Macdonald asked Caroline Halliday whether she had recently had a fight with her boyfriend. She took offence to the question. Constable Macdonald testified

that at another point, Caroline Halliday advised him that she had a brain tumour. At the hearing, Caroline Halliday denied that she had told Constable Macdonald that she had a brain tumour.

3. **THE ARREST FOR BEING ABOUT TO COMMIT THE OFFENCE OF DRIVING WHILE PROHIBITED:**

Section 495 (1) of the Criminal Code provides that a peace officer may arrest without a warrant

> "(a) a person who has committed an indictable offence or who, on reasonable grounds, he believes has committed or is about to commit an indictable offence"

There is no suggestion that Caroline Halliday had committed an indictable offence. Constable Macdonald testified that he arrested Caroline Halliday because he believed that she was about to commit the indictable offence of driving while disqualified contrary to section 259 (4) of the Criminal Code.

It is not necessary, for the purpose of considering the complaint of Caroline Halliday that Constable Macdonald used excessive force, to determine whether or not Constable Macdonald had reasonable and probable grounds to believe that Caroline Halliday was about to commit the indictable offence of driving while disqualified. Nevertheless, it is important to describe the circumstances of the arrest because they have a direct bearing on the use of the carotid control technique by Constable Macdonald.

Constable Macdonald testified that when he started to write up the tickets, Caroline Halliday said:

> "That' it, I've had enough, I'm driving home."

She opened the door of the police car and started to get out. Constable Macdonald reached across the front seat, grabbed hold of her coat and said "You're not going anywhere." He told her that she was under arrest for driving while prohibited. She closed the door of the police car. He again informed her of her right to counsel under the Charter of Rights and Freedoms.

Caroline Halliday testified that when she did not get any further response to the questions she had been addressing to Constable Macdonald, she put her hand on the inside door handle of the police car for the purpose of getting out of the police car and said "But I'd like to". Before she could finish the sentence, Constable Macdonald grabbed her left arm and told her to "Sit there." She testified that her intention was to check and make sure that her car was alright because it was the only thing that she owned. Caroline

Halliday denied that she had ever suggested to Constable Macdonald that she intended to drive home. Caroline Halliday does not recall being told, while she was in the front seat of the police car, that she was under arrest.

There is a direct conflict between the testimony of Constable Macdonald and the testimony of Caroline Halliday with respect to whether she expressed an intention to drive her car home after Constable Macdonald informed her of the suspension of her driver's licence. Auxiliary Constable Geddie who arrived at the scene in response to Constable Macdonald's call for back-up assistance never heard Caroline Halliday say that she wanted to drive her car but rather she was explaining that she needed her car for the next day to go to work. On the other hand, Constable Horsman, who arrived with Auxiliary Constable Geddie, testified that during his conversation with Caroline Halliday, she expressed the desire, on several occasions, to drive her car home. Constable Macdonald testified that when she subsequently got out of the police car she did not proceed toward her car but rather she moved toward the rear of the police car which was in a direction that was away from the location of her car and toward the town of Sidney. This action tends to corroborate Caroline Halliday's testimony that she did not intend to "drive" her vehicle.

Caroline Halliday could only be validly arrested if Constable Macdonald had reasonable grounds to believe that she was about to commit the offence of driving while disqualified. The validity of the arrest depends upon the validity of the 24 hour suspension of Caroline Halliday's driver's licence. As previously mentioned, the Commission is not making any finding with respect to the validity of the 24 licence suspension. Assuming, without finding, that the 24 hour licence suspension was valid and assuming, without finding, that Caroline Halliday did express the intention of driving her car, the mere expression of an intention to drive, while she was seated in the front seat of the police cruiser, could not constitute reasonable grounds for believing that she was about to commit the indictable offence of driving while prohibited.

4. **WERE REASONABLE GROUNDS PRESENT TO JUSTIFY THE USE OF FORCE AND DID THE APPLICATION OF THE CAROTID CONTROL TECHNIQUE CONSTITUTE THE USE OF MORE FORCE THAN WAS NECESSARY?**

Caroline Halliday testified that a few moments after her first attempt to leave the police car, she again put her hand on the door and said: "I'd like to check my car." Constable Macdonald became very upset and responded by saying "That's it!" He got out of his side of the car, came around to the passenger side of the car, opened the passenger door, grasped Caroline Halliday by her right arm above the elbow and pulled her out of the car. As she was being pulled from the police car, she fell down. When she got up, Constable Macdonald opened the rear door of the police car, grabbed her by the back of the neck with his hand, shoved her head down and tried to push her into the back seat of the police car. When she complained that he was hurting her, he let go and applied what she perceived as being a choke hold. She testified that Constable Macdonald's arm was "...right up against my windpipe, straight across." She testified that she could not breath and that she thought that she was going to die. She ended up on her knees on the roadway with her head on the rear seat of the police car. At that point two other officers arrived.

Constable Macdonald acknowledged that on this second attempt to leave the police car, she did not say anything more than that she was leaving and she may not have said that she intended to drive. Constable Macdonald's testimony was:

> "She just kind of gave me the impression by the way she flung the keys up and her previous thing that she said she was actually going to drive home that I had -- I felt a strong indication by her manner, with the indication with the keys and the fact that she was going, that she was going to in fact attempt to drive her vehicle home."

Constable Macdonald testified that when she started to get out of the car, he got out of the driver's side of the car, briskly walked around the front of the police car to the passenger's side where Caroline Halliday was standing outside the police car with her hand on the door. Constable Macdonald testified that he instructed her to get into the back seat of the police car. She refused to get in and he took her by the arm and began to walk her to toward the rear door of the police car. He testified that she told him that she did not have to get in the back seat and she attempted to get away from him. She apparently only took one step before Constable Macdonald grabbed her and reminded her that she was under arrest. She was still attempting to get

away so he twisted her arm up behind her back and held her against the police car. She still resisted so he released the arm lock because of a fear of breaking something. She was flailing about for 25 or 30 seconds before he decided to apply the carotid control technique. He began to apply the carotid control technique but she made a gurgling or gagging sound that indicated to him that the carotid control technique was incorrectly applied. He adjusted the hold and he testified that he knew that he had it on correctly because she took her hands away from her throat. She was still struggling as he started applying the hold correctly and then he remembered that she had told him that she had a brain tumor. He released the pressure but kept his arms in the carotid control position for the purpose of maneuvering her into the rear seat of the police car. He was unsuccessful in getting her into the back seat of the car. He realized that the situation was beyond his control and he called for back-up assistance by using his portable radio. Constable Horsman, who had Constable Geddie with him, arrived within 10 - 15 seconds. As soon as they arrived, Constable Macdonald released Caroline Halliday.

Both Constable Horsman and Auxiliary Constable Geddie testified that when they first observed Caroline Halliday, after they arrived at the scene, she was standing facing Constable Macdonald and that Constable Macdonald was corralling her in the doorway of the car. Constable Macdonald backed away from the car and Constable Horsman spoke to Caroline Halliday. After Constable Horsman explained the situation to her, she voluntarily got into the back seat of Constable Macdonald's police car.

Constable Macdonald testified that he is six feet tall and weighs 185 pounds. Caroline Halliday is a small woman. She testified that she is five foot three inches tall and weighs about 100 pounds. Under cross-examination, Constable Macdonald acknowledged that Caroline Halliday never punched or kicked him. He testified that he didn't use the carotid control technique because of any fear that she was going to strike him or that his life was in danger. He testified that he was trying enforce the law. In cross-examination by Mr. McKimm, and after being referred to the notes that he made at the time, he acknowledged that he used the carotid control technique to enable him to place Caroline Halliday into the police car without causing any injuries to her.

Constable Macdonald testified that he has found the carotid control technique to be a "very effective"

technique to get a person, who is struggling violently, to come to their senses. He also testified that he had used the carotid control technique on well over 50 occasions to place a person in the back of a police vehicle.

When Caroline Halliday returned to her home she discovered that she had red marks in the area of her throat and on her arm. She also had difficulty swallowing for several days. The white jacket that she had been wearing had several black marks on it.

The Commission is not making any finding on the validity of the 24 hour suspension of Caroline Halliday's driver's licence or the arrest. Assuming that the 24 hour driver's licence suspension and the arrest were both valid, an officer is only justified by section 25 (1) of the Criminal Code in "using as much force as is necessary" to make an arrest and in the case of a person who has been arrested taking flight to avoid arrest, section 25 (4) provides that an officer is justified in

> "using as much force as is necessary to prevent the escape by flight unless the escape can be prevented by reasonable means in a less violent manner."

The facts of the case of Drda v. The Queen, an unreported judgment of the British Columbia Supreme Court, Vancouver Registry No. CC891894 (November 16, 1990) were somewhat similar to those in the Caroline Halliday complaint. There had been a minor traffic accident involving Drda's vehicle. A police officer commanded Drda to remain at the scene. Drda told the officer that he could go anywhere he wanted and began to walk away. The officer grabbed Drda and Drda resisted. The officer applied a carotid neck restraint and rendered Drda unconscious. The words of Madame Justice Huddart, in that case, that were quoted earlier, bear repeating.

> "Nevertheless, the choke-hold and subsequent unconsciousness endured by Mr. Drda deprived him of his liberty and fundamental dignity as an individual. In my view, this invasion of his rights was neither necessary nor reasonable given the nature of the situation....The grossly excessive, unwarranted use of a choke-hold to render Mr. Drda unconscious, took this act beyond the scope of police powers at common law and rendered it unlawful."

Mr. Kardish, counsel for Constable Macdonald, submitted that Constable Macdonald's application of the carotid control technique was in accordance with his training

by the RCMP and that his conduct should not attract criticism by the Commission. The Commission acknowledges that Constable Macdonald was trained in the application of the carotid control technique by the RCMP as part of his basic recruit training program and that at the time of the event which is the subject of Caroline Halliday's complaint, the RCMP Operations Manual specifically authorized the use of the carotid control technique. It is also true that the RCMP has not, as a matter of written policy, given much guidance to its members with respect to the circumstances in which it is appropriate to use the carotid control technique. Nevertheless, by the Criminal Code, police officers are only justified in using as much force as is necessary to make an arrest or to prevent flight to avoid an arrest. Therefore, RCMP members must exercise reasoned judgment with respect to the type and the amount of physical force that is necessary to effect an arrest or prevent flight to avoid arrest. The fact that an officer has been trained in the use of a particular hold does not mean that the member may use it whenever a citizen does not comply with the officer's commands.

Constable Macdonald testified and the Commission accepts that he honestly believed that he could properly apply the carotid control technique without a risk of any dangerous consequences to the person on whom it was applied.

Bearing in mind the relative sizes of Constable Macdonald and Caroline Halliday and the other compliance techniques that RCMP members are trained to use, the attempted use of the carotid control technique on Caroline Halliday was an application of more force than was necessary to effect an arrest or prevent escape to avoid arrest.

Constable Macdonald testified that the fact that he was a male officer and the person, with whom he was dealing in this matter, was a woman, limited the compliance techniques that he felt it would be proper to apply. Caroline Halliday testified that the fact that she was woman who was alone, in the middle of the night, on a deserted highway, with a male officer made her feel very vulnerable and apprehensive.

FINDINGS:

G. The use of the carotid control technique on Caroline Halliday in the circumstances of this complaint constituted an application of more force than was necessary and any escape by flight could have been prevented by other reasonable means in a less violent manner.

H. Constable Macdonald believed on the basis of his basic recruit training as a member of the RCMP that the use of the carotid control technique was an acceptable means of effecting an arrest and preventing an escape from custody in the circumstances of this complaint.

I. Constable Macdonald honestly believed that he could properly apply the carotid control technique without a risk of any dangerous consequences to the person on whom it was applied.

RECOMMENDATIONS

8. The Commission recommends that the Commissioner write to Caroline Halliday
   (a) to thank her for bringing her concerns to his attention;
   (b) to express the regret of the RCMP with respect to the fear, personal distress, and bruises that she suffered from the application of the carotid control technique; and
   (c) to advise her that the RCMP will be conducting a review of its policies and training programs with respect to the use of the carotid control technique and that this review will take into account the findings and recommendations that have been made in this Report.

9. The RCMP reimburse Caroline Halliday for the cost of dry cleaning the jacket that she was wearing at the time of the conduct which is the subject of her complaint. The Commission fixes the cost of dry cleaning the jacket at $20.00.

10. The RCMP review its basic recruit training program and its in-service training programs with a view to ensuring that RCMP members are provided with instruction on the sensitivities that must be borne in mind when an officer is dealing with a member of the opposite gender.

PART V: OTHER MATTERS

1. PRESERVATION OF RECORDINGS OF POLICE RADIO COMMUNICATIONS

In the Halliday hearing, Constable Macdonald made at least three radio communications that could have been

relevant to the inquiry. The Commission was informed that radio communications are recorded if they are routed through the Colwood Command Centre but the recordings are erased after a period of weeks. In many cases, the RCMP will have received a citizen's complaint before the recordings are erased.

RECOMMENDATION:

11. When the RCMP receives a complaint or notice of a complaint, the recordings of any police radio communications by officers that may pertain to the complaint should be preserved and if a complaint is filed with the Public Complaints Commission, a copy of the recorded communication should be produced to the Public Complaints Commission.

2. CONDUCT OF INTERNAL INVESTIGATIONS

With respect to both the Halliday and Cooper complaints the internal investigation was conducted by another member of the same detachment. This places the member assigned to the conduct the internal investigation in a very difficult position. He or she is being ordered to investigate a member with whom the investigator often works with on a daily basis. In the course of their regular police duties that are unrelated to the complaint, the life of the investigator may depend on the conduct and reaction of the member being investigated.

With respect to both the Halliday and Cooper complaints, the officer who conducted the internal investigation did not speak to the complainant prior to making his recommendation. With respect to the Halliday complaint, the internal investigation was conducted by Corporal Bouwman. He based his recommendation on the written statements that had been taken by Corporal Shoesmith and his discussion with Constable Macdonald. He only spoke to the complainant for the purpose of getting her to sign the Form 1442 complaint form. In some cases the complainant may not want to discuss that matter any further, particularly where the complainant has already given a comprehensive statement to an officer conducting a criminal investigation. In most cases, nothing will be lost and perhaps much to be gained, if the investigator speaks directly to the complainant. The printed page does not always convey the tone or spirit of the complaint.

RECOMMENDATIONS:

12. Internal investigations should, where possible, be conducted by an officer from another detachment.

13. Internal investigators, as a matter of policy, should contact the complainant and at least ascertain whether the complainant wishes to discuss the matter with the investigator.

3. INFORMAL RESOLUTION OF COMPLAINTS

In neither the Halliday complaint nor the Cooper complaints, was an attempt made at an informal resolution of the complaints. With respect to the Halliday complaint, Staff Sergeant Wilson concluded, that Caroline Halliday's complaint was unsubstantiated on the basis of reading the reports prepared by the investigators and from his personal knowledge of Constable Macdonald. In response to a question from Ms. Trehearne, he stated that he did not call or discuss the matter with Caroline Halliday after he had received the reports from his investigators. He also concluded, after reading Caroline Halliday's complaint, that the differences were too great and it was not worth making an effort to achieve an informal resolution.

After hearing the testimony of Caroline Halliday and Constable Macdonald, the Commission was left with the impression that if there had been an earlier opportunity for them to meet and gain some understanding of the perspective of the other with respect to the events that transpired on the evening in question, the complaint may have been informally resolved. If Constable Macdonald had been able to hear Caroline Halliday's perception of the events as she related them to the Commission and if Caroline Halliday had been able to hear Constable Macdonald's perception of the events as he related to them to the Commission, each may have better understood why the other acted in the way he or she did. For example, if Caroline Halliday had known that Constable Macdonald had stopped another woman earlier that evening who gone through either a red light or a stop sign and that he had decided not to give her a ticket because she was emotionally upset from just having had an argument with her husband, she may have understood why Constable Macdonald asked her if she had recently had a fight with her boyfriend. Similarly, if Constable Macdonald had understood Caroline Halliday's fears about her personal safety and her concern about her only possession, her car, he may have understood why she became so distraught.

Unfortunately, Caroline Halliday gained the impression that nobody was listening to her complaint until her complaint reached the Public Complaints Commission.

Mediation of complaints will not be suitable for every type of complaint and its success rate may not be high. But to the extent that it is successful, everybody will benefit.

RECOMMENDATION:

14. When a complaint is made to the RCMP, the commanding officer of the detachment should consider whether the nature of the complaint is one that may be amenable to informal resolution pursuant to section 45.36 (1). If the commanding officer concludes that there may an opportunity for informal resolution, the commanding officer should normally contact the complainant to inquire whether the complainant is willing to seek some informal resolution of the complaint.

4. PRODUCTION OF EVIDENCE BY THE RCMP TO THE PCC

In both the Halliday and Cooper Hearings, it became apparent that the notes made by an officer who was the subject of the complaint, had not been produced to the Public Complaints Commission prior the hearing. Constable Leach testified that nobody had requested him to provide a copy of his notes. Consequently, other counsel did not have copies of his notes and it was necessary to grant an adjournment in order to provide counsel, who was cross-examining Constable Leach, with an opportunity to review the notes and prepare his cross-examination on the notes. Mr. Sorochan, ad hoc counsel to the Commission informed the Commission Panel that a letter had been sent to the RCMP specifically requesting the notes of all officers who were involved these complaints. Ms. Brucker, counsel for the appropriate officer advised the Commission Panel that she had not been provided with copies of Constable Leach's notes.

RECOMMENDATION

15. Whenever a complaint has been filed with the Public Complaints Commission, copies of the notebooks of all of the officers who have been involved with the subject matter of the complaint shall be produced to the Public Complaints Commission.

PART VI: SUMMARY OF RECOMMENDATIONS

It is not the Commission's purpose or function under Part VII of the Royal Canadian Mounted Police Act, 1986 to determine criminal responsibility or assess civil liability in connection with incidents that gave rise to complaints that have been the subject of these hearings. In addition, it must be noted that disciplinary action, if it should be warranted, falls outside Part VII of the Act. The mandate of the Commission is to hear and inquire into allegations contained in a complaint and to prepare a report that makes findings and recommendations with respect to the complaints. This report is sent to the Commissioner of the RCMP and the Solicitor General of Canada. The purpose of the report is to make findings with respect to the facts that gave rise to the complaint and, where the complaint is well-founded, to make recommendations that are designed to provide the complainant with a measure of satisfaction and to assist the RCMP in improving its competence.

RECOMMENDATIONS:

1. **The RCMP consider the development and provision of in-service training programs in the use of compliance techniques and come-along holds including the carotid hold for officers who are expected to operate in the field. These programs should be provided at regular intervals and should include an evaluation of an officer's skills, retraining where required, and instruction with respect to new information and techniques.**

2. **RCMP Training staff should be encouraged to develop their knowledge and skills, which are related to their training responsibilities, by attending seminars, and training programs, and reading current literature and journals. In particular, they should be encouraged to attend programs where representatives of other police organizations are making presentations.**

3. **The RCMP consider the development and use of a form on which any use of the carotid control technique will be recorded and which will enable the commanding officer of each detachment to periodically review the use of the carotid control technique by RCMP members of the detachment.**

4. **The RCMP should review the growing body of knowledge with respect to the physiological and medical effects of applying the carotid control technique, the policies and training manuals that**

have been developed by other police forces and law enforcement agencies and the concerns expressed by courts and other commissions of inquiry and revise and develop its policies and training programs with respect to the use of the carotid control technique having particular regard to

(a) its use when RCMP policy otherwise authorises the use of lethal force.

(b) the safety of the officer or other persons who may be in danger by reason of the conduct of the person on whom it is proposed to use the carotid control technique;

(c) the availability and suitability of other methods of effecting an arrest or achieving compliance with the lawful commands of an officer that less potential to cause harm; and

(d) not using the carotid control technique either a as method of merely controlling an uncooperative suspect or as a come-along technique where less dangerous means of accomplishing the RCMP member's objective may be used.

5. The RCMP consider reintroducing its policy with respect to the use or application of the carotid control technique and any revisions of this policy into the RCMP Operations Manual or other document where it will be readily available to all members of the RCMP.

6. RCMP Members should be advised of the potentially dangerous consequences that may occur even from a proper application of the carotid control technique.

7. The self-defence component of the Recruit Training Program be reviewed and, if advisable, revised having regard to the factors enumerated in Recommendation Four.

8. The Commissioner write to Caroline Halliday

(a) to thank her for bringing her concerns to his attention;

(b) to express the regret of the RCMP with respect to the fear, personal distress, and bruises that she suffered from the application of the carotid control technique; and

(c) to advise her that the RCMP will be conducting a review of its policies and training programs with respect to the use of the carotid control technique and that this review will take into account the findings and recommendations that have been made in this Report.

9. The RCMP reimburse Caroline Halliday for the cost of dry cleaning the jacket that she was wearing at the time of the conduct which is the subject of her complaint. The Commission fixes the cost of dry cleaning the jacket at $20.00.

10. The RCMP review its basic recruit training program and its in-service training programs with a view to ensuring that RCMP members are provided with instruction on the sensitivities that must be borne in mind when an officer is dealing with a member of the opposite gender.

11. When the RCMP receives a complaint or notice of a complaint, the recordings of any police radio communications by officers that may pertain to the complaint should be preserved and if a complaint is filed with the Public Complaints Commission, a copy of the recorded communication should be produced to the Public Complaints Commission.

12. Internal investigations should, where possible, be conducted by an officer from another detachment.

13. Internal investigators, as a matter of policy, should contact the complainant and at least ascertain whether the complainant wishes to discuss the matter with the investigator.

14. When a complaint is made to the RCMP, the commanding officer of the detachment should consider whether the nature of the complaint is one that may amenable to informal resolution pursuant to section 45.36 (1). If the commanding officer concludes that there may an opportunity for informal resolution, the commanding officer should normally contact the complainant to inquire whether the complainant is willing to seek some informal resolution of the complaint.

15. Whenever a complaint has been filed with the Public Complaints Commission, copies of the notebooks of all of the officers who have been involved with the subject matter of the complaint shall be produced to the Public Complaints Commission.

16. The RCMP inform the Commission of all measures that are taken in response to this Report in order the Commission Chairman may prepare the Commission's annual report in accordance with section 45.34 of the Act.

APPENDIX B

Royal Canadian Mounted Police

N.D. Inkster
Commissioner Le Commissaire

January 30, 1992

Mr. Fernand Simard
Acting Chairman
RCMP Public Complaints Commission
P.O. Box 3423
Postal Station "D"
Ottawa, Ontario
K1P 6L4

Dear Mr. Simard:

In response to the Commission report and transcripts relating to the public complaints of Ms Caroline Halliday of Brentwood Bay, British Columbia, references 2000-PCC-90170 and 89G-4603, the following constitutes notice of any further action that will be taken in accordance with subsection 45.46(2) of the RCMP Act.

I note the Commission received a great deal of evidence concerning the carotid control technique and as a consequence, the Commission made a number of findings and recommendations relating to RCMP policies, procedures and training programs. In accordance with subsection 5 (1) of the RCMP Act, the Commissioner of the RCMP, under direction of the Minister, has the control and management of the Force and all matters connected therewith. Therefore, I will take these findings and recommendations under advisement. They will be examined and reviewed as an internal matter by policy sections of the various RCMP Directorates. The results will then be forwarded to the Minister in my annual Accountability Report.

In respect of findings (B) and (F), they are viewed as observations rather than findings. Findings (A) (C), (D) and (E), along with Recommendations (1), (2), (3), (4), (5), (6) (7) and (10) are not directly related to the resolution of the complaint and, as a result, I take them under advisement. I will instruct the Director of Training to examine and review them as an internal matter.

.../2

1200 Vanier Parkway
Ottawa, Ontario
K1A 0R2

1200, promenade Vanier
Ottawa (Ontario)
K1A 0R2

I share your finding (G) that, based on the evidence presented, the use of the carotid control technique on the complainant constituted more force than was necessary in this circumstance.

I also accept findings (H) and (I). I, therefore, agree with Recommendation #8 (a), (b) and (c) and I will instruct the Commanding Officer, "E" Division to write to Ms Halliday and extend an apology on behalf of the Force. Ms Halliday will also be advised that the Director of Training will be examining and reviewing RCMP policies and training programs relating to the carotid control technique.

With regard to recommendation #9, I will instruct the Commanding Officer, "E" Division that reimbursement of $20.00 be made available for the cost of dry cleaning the complainant's jacket.

I note "Other matters" address issues such as the preservation of recordings of police communications, the conduct of internal investigations, the informal resolution of complaints and the production of evidence by the RCMP to the PCC. They are reflected in Recommendations #11, #12, #13, #14 and #15, which I take under advisement. I will, however, instruct the Director of Personnel to examine and review them as an internal matter.

In order to ensure that matters addressed in this notice are given full and proper consideration, I will personally monitor their ultimate resolution.

I thank you for the advice and I look forward to receiving your final report.

Sincerely,

N.D. Vinkster